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Attorneys for Complainant

**BEFORE THE  
BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Accusation Against:**

**THOMAS J. BERNARD**

556 E. Mariners  
Fresno, CA 93720

Certified Public Accountant  
Certificate No. CPA 67358

Respondent.

**CASE NO. AC-2001-18**

**DEFAULT ORDER AND  
DECISION**

**STATUTES AND REGULATIONS**

1. California Government Code section 11506 provides, in pertinent part:

“(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and any such notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent’s right to a hearing, but the agency in its discretion may nevertheless grant a hearing. Unless objection is taken as provided in paragraph (3) of subdivision (a), all objections to the form of the accusation shall be deemed waived.”

California Government Code section 11506 further provides that the Notice of Defense shall be filed within 15 days after service of the Accusation. [Govt. Code sections 11506(a) and (b)].

2. California Government Code section 11520 provides, in pertinent part:

“(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent’s express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent....”

3. The Board of Accountancy, Department of Consumer Affairs (“Board”), is authorized to revoke Respondent’s Certified Public Accountant License pursuant to California Business and Professions Code (“Code”) section 5100, which authorizes the Board of Accountancy to revoke, suspend or refuse to renew or censure the holder of any permit or certificate granted under Articles 4 (commencing with section 5070) and 5 (commencing with section 5080) of the Code for unprofessional conduct.

4. Pursuant to section 5100, subdivision (a), of the Code, unprofessional conduct includes “[c]onviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.”

5. Sections 490 and 5106 of the Code provide that a plea of nolo contendere is considered a "conviction" for purposes of disciplinary action by the Board and that the record of the conviction shall be conclusive evidence thereof.

6. Section 5063 of the Code provides that a licensee shall report to the Board in writing within 30 days the licensee's conviction, including those based upon a plea of no contest, of any crime involving theft, embezzlement, or misappropriation of funds or property.

7. Section 118, subdivision (b), of the Code provides, in pertinent part, that the expiration of a license shall not, during any period in which it may be renewed, restored, reissued or reinstated, deprive the Board of authority to institute or continue with a disciplinary proceeding or otherwise to take disciplinary action against the licensee.

## **FINDINGS OF FACT**

8. On or about September 30, 1994, Certified Public Accountant Certificate No. CPA 67358 was issued by the Board to Thomas J. Bernard ("Respondent"). The certificate expired on March 31, 1999, and has not been renewed.

1                   9.       On or about February 16, 2001, Carol B. Sigmann, in her official capacity  
2 as Executive Officer of the Board, filed Accusation No. AC-2001-18 against Respondent. A true  
3 and correct copy of the Accusation is attached hereto as Exhibit A and is incorporated as if fully  
4 set forth herein.

5                   10.      On or about March 6, 2001, Teri Sharp, an employee of the Office of the  
6 Attorney General, sent by certified and first class mail a copy of Accusation No. AC-2001-18,  
7 Statement to Respondent, Government Code sections 11507.5, 11507.6 and 11507.7, the Notice  
8 of Defense form, and a Request for Discovery to Respondent's address of record with the Board,  
9 which was and is 556 E. Mariners, Fresno, California 93720, and to another known address for  
10 Respondent, which is 12577 Moffatt Lane, Fresno, California 93720. The certified mail packets  
11 were returned to the Office of the Attorney General marked "unclaimed." The above-described  
12 service was effective as a matter of law pursuant to provisions of California Government Code  
13 section 11505(c).

14                  11.      Respondent failed to file a Notice of Defense or to otherwise respond  
15 within 15 days after service of the Accusation upon Respondent at both his address of record and  
16 at his other known address. Respondent thereby waived his right to a hearing on the merits of  
17 Accusation No. AC-2001-18.

18                  12.      Pursuant to its authority under Government Code section 11520, and based  
19 on the evidence before it, the Board finds that the following allegations contained in Accusation  
20 AC-2001-18 are true:

21                       A.      On or about July 10, 2000, in the U.S. District Court of Nebraska,  
22 Case No. 4:98CR3069, Respondent was convicted by his plea of guilty of two counts of violating  
23 Title 18, U.S.C. sections 1344 and 2 (bank fraud). The circumstances surrounding said  
24 convictions are that Respondent diverted approximately \$1,300,000, obtained from the sale of  
25 cattle by Sand Hills Beef, Inc., to pay the expenses of another affiliated company when the money  
26 should have been paid to FBS Agriculture Credit, Inc., to which the cattle had been pledged as  
27 collateral.

1 B. Respondent failed to report to the Board his felony convictions in  
2 the U.S. District Court of Nebraska, Case No. 4:98CR3069.

3 **DETERMINATION OF ISSUES**

4 By reason of the foregoing Findings of Fact, Respondent is subject to disciplinary  
5 action under section 5100 of the Business and Professions Code based upon each of the following  
6 determinations:

7 13. Respondent's license to practice as a Certified Public Accountant is subject  
8 to discipline for unprofessional conduct under section 5100, subdivision (a), of the Code in that  
9 Respondent was convicted of a crime substantially related to the qualifications, functions and  
10 duties of a certified public accountant, as described in paragraph 12A.

11 14. Respondent's license to practice as a Certified Public Accountant is subject  
12 to discipline for unprofessional conduct in that Respondent violated Code section 5063 by failing  
13 to report to the Board his felony convictions, as set forth in paragraph 12B.

14 15. Under each of the Determination of Issues, based upon the Findings of Fact,  
15 cause for disciplinary action by way of revocation of licensure has been established.

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Pursuant to California Government Code section 11520(b), Respondent is entitled to make any showing by way of mitigation: however, such showing must be made in writing to the Board of Accountancy, 2000 Evergreen Street, Suite 250, Sacramento, California 95815, prior to the effective date of this decision.

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11 In the Matter of the Accusation Against:

Case No. AC-2001-18

12 THOMAS J. BERNARD  
556 E. Mariners  
13 Fresno, CA 93720

ACCUSATION

14 License No. CPA 67358

15 Respondent.  
16

17 Complainant alleges:

18 PARTIES

19 1. Carol B. Sigmann ("Complainant") brings this Accusation solely in her  
20 official capacity as the Executive Officer of the Board of Accountancy, Department of Consumer  
21 Affairs.

22 2. On or about September 30, 1994, the Board of Accountancy issued  
23 License Number CPA 67358 to Thomas J. Bernard ("Respondent"). The CPA License expired  
24 on March 31, 1999, and has not been renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board of Accountancy ("Board"),  
27 under the authority of the following sections of the Business and Professions Code ("Code").  
28

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime)

4. Respondent is subject to disciplinary action under Business and Professions Code section 5100 (a). On or about July 10, 2000, in the U.S. District court of Nebraska, Case No. 4:98CR3069, respondent was convicted by his plea of guilty of two counts of violating Title 18, U.S.C. sections 1344 and 2 (bank fraud). The circumstances are that respondent diverted approximately \$1,300,000, obtained from the sale of cattle by Sand Hills Beef, Inc. to pay the expenses of another affiliated company when the money should have been paid to FBS Agriculture Credit, Inc., to which the cattle had been pledged as collateral.

SECOND CAUSE FOR DISCIPLINE

(Failure to Notify Board of Conviction)

5. Respondent is subject to disciplinary action under Business and Professions Code section 5063. Respondent has failed to notify the Board of his felony convictions in U.S. District Court of Nebraska, Case No. 4:98CR3069.

COST RECOVERY

6. Business and Professions Code section 5107 provides that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

7. The Board has incurred reasonable costs in investigating and enforcing this disciplinary action against respondent, the exact amount of which cannot be known until immediately prior to the commencement of the hearing for this case. The amount and proof of such costs will be provided at, or immediately prior to, the hearing, pursuant to Business and Professions Code section 5107.


WHEREFORE, complainant prays that the Board hold a hearing on the matters alleged herein and following said hearing issue a decision and order:

1. Revoking or suspending License No. CPA 67358 issued to Thomas J. Bernard.

1                   2.     Ordering Thomas J. Bernard to pay the Board its costs it incurred in  
2 investigating and enforcing the case according to proof at the hearing pursuant to Business and  
3 Professions Code section 5107; and,

4                   3.     Taking such other and further action as deemed necessary and proper.

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6                   DATED: February 16, 2001.

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10                   CAROL B. SIGMANN  
11                   Executive Officer  
12                   Board of Accountancy  
13                   Department of Consumer Affairs  
14                   State of California  
15                   Complainant

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